

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA : 3:04-CR-373

v. : (Judge Kosik)

DAVID RHODES : (Electronically Filed)

**MOTION TO DISMISS THE INDICTMENT
ON DUE PROCESS GROUNDS
or in the alternative,
SUPPRESS STATEMENTS**

NOW COMES the Defendant, David Rhodes, by and through his attorney, Gino A. Bartolai, Jr., Assistant Federal Public Defender, and moves this Honorable Court to dismiss the Indictment, or in the alternative, suppress statements of the Defendant, and in support thereof avers as follows:

1. On October 29, 2004, David M. Rhodes was charged in a criminal complaint with threatening to assault a law enforcement officer , in violation of 18 U.S.C. § 115(a)(1)(B); and use of interstate communications to facilitate a threat, in violation of 18 U.S.C. 875(c).

2. On October 29, 2004, Magistrate Judge Malachy E. Mannion appointed the Office of the Federal Public Defender to represent Rhodes in this matter.

3. On November 3, 2004, Rhodes was indicted and charged with threatening to assault and murder law enforcement officers, in violation of 18 U.S.C. § 115(b).

4. On November 5, 2004, Rhodes was arraigned before this Honorable Court and entered a plea of "not guilty" to the charge contained in the Indictment.

5. On April 27, 2005, a Superseding Indictment was filed adding the charge of transmitting in interstate commerce a threat to injure federal law enforcement officers, in violation of 18 U.S.C. §875(c).

6. While Rhodes was employed as a corrections officer at FCI Schuylkill he was directed to the Employee Assistance Program, (EAP), which was coordinated by Dr. Gary Londis. EAP services are strictly confidential.

7. From on or about May 1, 2004, until October 31, 2004, Rhodes spoke with Dr. Londis on numerous occasions. Unbeknownst to Rhodes, Dr. Londis was speaking to Rhodes not in his professional capacity but as an operative of Warden John Nash.

8. The actions of Warden Nash and Dr. Londis are unconscionable and Rhodes submits that the Indictment should be dismissed pursuant to the Fifth Amendment Due Process Clause, or in the alternative, any statements made by Rhodes to Dr. Londis should be suppressed for the same reason.

WHEREFORE, the Defendant, David Rhodes, respectfully requests that this Honorable Court dismiss the Indictment, or alternatively, suppress statements made by Rhodes to Dr. Londis.

Respectfully submitted,

Date: September 7, 2005

s/Gino A. Bartolai, Jr.
Gino A. Bartolai, Jr., Esquire
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Attorney for David Rhodes

CERTIFICATE OF NON-CONCURRENCE

I, Gino A. Bartolai, Jr., Assistant Federal Public Defender, certify that on this date I contacted Todd K. Hinkley, Assistant United States Attorney and counsel advised that he does not concur in the within **Motion to Dismiss the Indictment on Due Process Grounds, or in the alternative, Suppress Statements.**

Date: September 7, 2005

s/Gino A. Bartolai, Jr.
Gino A. Bartolai, Jr., Esq.
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I, Gino A. Bartolai, Jr., Esq., Assistant Federal Public Defender, do hereby certify that I electronically served, via email, a copy of the foregoing **Motion to Dismiss the Indictment on Due Process Grounds, or in the alternative, Suppress Statements**, to the following:

Todd K. Hinkley, Esq.
Assistant United States Attorney

and by placing the same in the United States mail, first class in Scranton, Pennsylvania, addressed to the following:

Mr. David Rhodes

Date: September 7, 2005

s/Gino A. Bartolai, Jr.
Gino A. Bartolai, Jr., Esq.
Assistant Federal Public Defender